

# ***SCHOOL SAFETY/DISCIPLINE MANUAL***

## **SECTION V: VIOLENCE**

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## V. VIOLENCE

Unfortunately, violent behavior, involving the potential of physical injury to another individual, threats thereof, and property damage, is a problem for all schools, regardless of the age of the students. Given the severity of incidents in recent years, including school shootings, death threats, and serious injuries, school officials must continually monitor student behavior.

### A. WEAPONS

Both state and federal law mandate that school districts prohibit the possession of weapons at school and school sponsored activities.

#### Federal Requirements

The federal Gun-Free Schools Act, as amended by the No Child Left Behind Act of 2001, mandates that state law provide that a student be expelled for a period of not less than 12 calendar months for possessing a “firearm” on school property or at a school-sponsored event, *“except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by case basis if such modification is in writing.”*<sup>1</sup> (Emphasis added.)

In compliance with the Gun-Free Schools Act, Idaho Code § 33-205 states in part:

Provided however, the board shall expel from school for a period of not less than one (1) year, twelve (12) calendar months, or may deny enrollment to, a student who has been found to have carried a weapon or firearm on school property in this state or any other state, except that the board may modify the expulsion or denial of enrollment order on a case-by-case basis.

Adopting a policy in compliance with the federal mandates is a prerequisite to receiving federal funds.

For purposes of implementing the Gun-Free Schools Act, a firearm is defined in section 921(a) of title 18, United States Code, as follows:

- any weapon (including a starter gun) that will be, or is designed to or may readily be, converted to expel a projectile by the action of an explosive;
- the frame or receiver of any weapon described above;
- any firearm muffler or firearm silencer;
- any destructive device<sup>2</sup>.

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<sup>1</sup> The Gun Free Schools Act was reauthorized by the No Child Left Behind Act of 2001, as Section 4141 of the Elementary and Secondary Education Act of 1965 (ESEA).

<sup>2</sup> (a) “Any destructive device” is defined to include any explosive, incendiary, or poison gas, including a bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device; (b) any weapon that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, and that has any barrel with a bore of more than one-half inch in diameter; (c) any combination or parts either designed or intended for use in

Antique firearms are not included in the definition of a “firearm.”<sup>3</sup> Further, firearms that are lawfully stored within a locked vehicle on school property and weapons used in district approved activities and for which appropriate safeguards have been adopted to ensure student safety are excluded from the definition of a “firearm.”

### **State Requirements**

The state prohibition against possessing weapons at school is broader than the federal requirement. Idaho Code §18-3302D prohibits any person from possessing “a firearm or *other deadly or dangerous weapon* while on school property, at a school sponsored event or on school transportation.” (Emphasis added.) The Idaho statute incorporates the definition of a firearm, as set forth above (Section 921 of title 18, United States Code). In addition, a “deadly or dangerous weapon” means any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury.<sup>4</sup> A pocketknife with a blade of less than 2 ½ inches in length is excluded from such definition.

### **Expulsion**

Idaho students must be expelled for a period of not less than one (1) year, twelve (12) calendar months, or be denied enrollment, if found to have carried a weapon or firearm on school property in this state or any other state.<sup>5</sup> Before the board can expel a student for possessing a weapon, pursuant to the Gun-Free Schools Act or Idaho Code §18-3302D, the student is entitled to due process as set forth in Idaho Code §33-205.<sup>6</sup> See Section 5, General Disciplinary Procedures.

However, both the federal and state laws allow the board to modify the expulsion order on a case-by-case basis.<sup>7</sup> As there are no substantive criteria in the statutes for determining that a modification of the expulsion order is appropriate, such a decision is left solely to the discretion of the local school board. Issues often considered by the board may include the student’s intent, the student’s actions, including whether he/she “brandished” the weapon and/or used it to threaten another student, the student’s age, and the past disciplinary history of the student.

### **Referral to Law Enforcement**

The Gun-Free Schools Act also requires school districts to refer to law enforcement students who bring a firearm to school or possess a firearm on school property. Idaho Code §33-205 requires that an authorized district representative report the student and event to the appropriate law enforcement agency.<sup>8</sup> The referral must be made, even if the board determines that the expulsion will be modified.

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converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled.

<sup>3</sup> Section 921(a) of title 18, United States Code.

<sup>4</sup> Section 930 of title 18, United States Code.

<sup>5</sup> Idaho Code §33-205.

<sup>6</sup> The student has the right to notice of the charges, and a hearing on such charges. The student has a right to be represented by counsel, to produce witnesses and submit evidence on his own behalf, and to cross-examine adult witnesses testifying against the student. See Section 5, General Disciplinary Procedures.

<sup>7</sup> Idaho Code §33-205 and Section 4141 of the Elementary and Secondary Education Act of 1965.

<sup>8</sup> Pursuant to Idaho Code §18-3302D, criminal sanctions may be imposed for possession of a firearm or deadly or dangerous weapon on school property, on school transportation, or at a school sponsored event.

## **Preventative Measures**

Given the potential danger of a student possessing a weapon at school, the district has a responsibility not only to prohibit the possession of weapons at school, but also to take affirmative actions to prevent students from bringing such weapons to school in the first place.

In some schools in other states, districts have taken such measures as installing metal detectors in the entrances to school buildings and requiring “pat-down” searches as people enter the buildings. While such actions may not be feasible and/or warranted in an Idaho school district, school officials must take reasonable steps to protect the students from harm:

- **Safe school campaign.** Develop and implement a campaign for a safe school environment, including students, staff, and community members in proactive exercises to establish an atmosphere of respect. Create strategies for students to resolve conflict in an effective manner.
- **Monitor student conduct.** Staff should routinely be present in all areas of school during school hours for the purpose of monitoring the students.
- **Encourage student reporting.** Develop strategies to encourage students to report suspicions that a student possesses a weapon, or to report threats of violence against the school community.
- **Role of Law Enforcement.** Develop a strong working relationship with law enforcement and, if possible, have law enforcement present in the schools on a frequent basis.
- **Searches.** Conduct random or “blanket” searches of student lockers, desks, and other personal belongings such as backpacks, as well as parking lots.

## **Responding to an Allegation of Possession of a Weapon**

The vast majority of situations in which students possess weapons at school do not involve the student using the weapon to inflict injury. Generally, the student is simply in possession of the weapon. However, the school district and students must be prepared to deal with the entire spectrum of potential scenarios.

- **Comprehensive Response Plan.** For each building, develop a comprehensive response plan to be implemented when school officials receive information that a student possesses, or may possess, a weapon. The response plan should:
  - Address a variety of reasonable scenarios involving different levels of dangerous, including a disaster plan.
  - Provide guidelines for staff and students to follow based on the perceived level of dangerous.
  - Mandate reporting of suspicions that a student may possess a weapon.
  - Identify the role of law enforcement in responding to allegations.
  - Develop a communication plan in the event of a crisis situation.
- **Practice Drills.** Educate staff members and students as to expectations regarding their behavior when an allegation of possession of weapons is received.
- **Educate Staff.** Educate staff regarding the comprehensive response plan, including the role and responsibilities of staff members. Develop strategies and educate staff members relative to their role in responding if present when a student is initially suspected of possessing a weapon.

- **Law Enforcement.** Immediately contact law enforcement, as appropriate. Also, refer all students who are found to have possessed a weapon or firearm at school to law enforcement.
- **Disciplinary Action.** Students who are found to be in possession of weapons must be disciplined, as appropriate.
- **Intervention.** In some situations, it may be appropriate to suspend a student who possesses a weapon at school while the situation is being investigated. If the school official determines that the student intended to cause harm, it may be appropriate to require a mental health assessment, and/or services, for the student prior to returning to the school setting. Referral may be made to the local children and mental health services in the Department of Health and Welfare, pursuant to local protocol.

## **B. GANG MEMBERSHIP**

Gang membership is a concern in many schools as it often goes hand-in-hand with violence and illegal activities, such as distributing controlled substances. Soliciting students to become members of a “fraternity, sorority, or secret society,” and/or becoming such a member are specifically prohibited by Idaho Code Sections 33-1901 and 1902.

Fraternities, sororities, and secret societies are defined as:

[A]ny organization the active membership of which is comprised in whole or in part of pupils enrolled in public elementary or secondary schools, and which exists or perpetuates itself wholly or partly by selecting members on the basis of the decision of its membership rather than upon the basis of the right of any pupil, qualified by the rules and regulations of the school, to be a member. The definition shall not be construed to include organizations institutionally sponsored by agencies of public welfare, such as the Boy Scouts of America, Girl Scouts of America, Campfire Girls, DeMolay, the YMCA and YWCA, and similar organizations. (Idaho Code §33-1902)

### **Disciplinary Actions**

Although the Idaho Code prohibits such membership, the only enforcer of the statutory provisions is the board of trustees of the school. Idaho Code §33-1903 authorizes the board to enforce the prohibition against membership in such “secret societies” by withdrawing the rights and privileges of the school, denying graduation, depriving the student of credit, or suspending or expelling the student.

### **School Interventions**

Schools should be a safe haven for all students. However, some students may feel or express concern regarding the presence of students whom they know to be members of certain gangs, and/or conduct they perceive to involve intimidating actions by gang members.

In an attempt to keep gangs from forming and/or operating in schools, school districts often adopt policies prohibiting students from wearing or using clothing, jewelry, emblems, badges or symbols, or signs, gestures, codes or other evidence of gang membership or affiliation. The school district has the right to adopt a policy that establishes a dress code to promote a positive educational environment. However, when banning specific items of attire because they are considered to be evidence of gang membership or affiliation, the school district

should first ascertain that gangs are active in the community, as well as the connection between banned attire and a local gang.

The policy must be specific, clearly identifying what is prohibited, including the clothing brands, if appropriate. Further, the building administrator should inform all students of the policies' contents, and enforce the policy equitably against all students, whether or not the student is believed to have an affiliation with a gang.

### **Role of Law Enforcement**

Membership in a gang is not, in and of itself, illegal. Therefore, the school cannot expect law enforcement to take action against students solely because they are gang members and/or exhibit, by their appearance or actions, gang membership. Rather, districts should work closely with local law enforcement to address the larger issue of curbing violence. Such cooperation allows the district to learn about gangs operating within the district and how to identify members of such gangs, as well as sharing information regarding possible gang activity occurring on school grounds. Law enforcement may provide the expertise the schools need to identify gang members and obtain an understanding as to the potential illegal activities of such gangs.

## **C. FIGHTING; ASSAULT AND BATTERY**

Fighting on school property is unacceptable behavior, for which students should be disciplined. In addition to the school district's disciplinary action, one or more of the individuals involved in a fight may be subject to criminal prosecution for assault and/or battery.

Assault is any willful attempt or threat to inflict injury upon another person, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the individual reason to fear or expect immediate bodily harm.<sup>9</sup> An assault may be committed without actually touching, or striking, or doing bodily harm to another person.

Battery is the willful and unlawful use of force or violence, or the actual, intentional, and unlawful touching or striking against the will of another, or unlawfully and intentionally causing bodily harm.<sup>10</sup>

### **Intervention Measures**

Schools have a responsibility to require that students keep their hands to themselves and to monitor students to ensure reasonable compliance. School officials will not be able to prevent every fight or even to preclude students from touching each other, whether or not the touching rises to the criteria of a battery. However, the school district must take reasonable steps to protect all students.

1. Adopt a policy that prohibits fighting and other unlawful touching.
2. Publish the policy in the student handbook.

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<sup>9</sup> Idaho Code §18-901.

<sup>10</sup> Idaho Code §18-903.

3. Assign staff members to monitor halls, bathrooms, and other common areas frequently.
4. Develop and implement age-appropriate programs for conflict resolution.
5. Encourage students to report instances of fighting or threats thereof.
6. Train staff to respond immediately to a fight or a confrontation between students that may escalate to a fight.
  - a. Staff members should not attempt to break up the fight physically.
  - b. Staff members should attempt to deescalate the situation by talking to the students.
  - c. Staff members should take steps to protect other students, including on-lookers.
  - d. Staff members should have a known method for alerting other staff members and/or law enforcement.
7. Require staff to document any incident, including names of involved students, and eyewitnesses, as well as what the staff member witnessed and/or heard.
8. Require students to document any incident, including names of involved students and eyewitnesses.

#### **D. STUDENT EXPRESSION/THREATS OF VIOLENCE**

School officials are often faced with a situation wherein the student does not take any action, but makes threats of violence against another student(s), staff member(s) or administrator(s), or in general relative to the school facilities. In many cases, the threat is verbal, made during a heated discussion and heard by the potential victim or others. In other cases, the threat(s) may be written or involve non-verbal gesturing. Regardless of the method of communicating the threat, school officials have a responsibility to respond immediately not only because of the potential that a student will carry out the threat, but also because of the disruption to the educational process caused by such threats.

##### **Types of Threats**

Threats involve verbal or written statements, or non-verbal communications, reasonably believed to instill fear of injury in the victim(s). These can include:

- Verbal or written statement that the perpetrator intends, or wants, to kill or otherwise cause physical harm to another.
- Verbal or written statement that the perpetrator has taken steps to cause physical harm to another (“I have a gun.”).
- Death lists.
- Fictional accounts of killing or causing physical harm to others, particularly when the “victims” are identifiable or reasonably appear to be caricatures of members of the school community.
- Posting threatening or intimidating messages on an Internet site.
- Nonverbal actions (pointing a finger or other object at an individual and pretending the object is a weapon) of an intimidating nature.

##### **Free Speech**

Often, the student denies that he/she intended to actually carry out the threat and that it was nothing more than talk. As a result, such statements bring into play the responsibilities of the

district to protect the safety and welfare of all students and employees versus the right of the student to engage in free speech.

Students have the right to express concerns, grievances, and viewpoints before school officials and fellow students, even when the content thereof is contrary to the beliefs of others. On the other hand, school officials have the right to govern the time, place, and manner of such “free speech” and can prohibit students from engaging in speech or expression that is defamatory, illegal, invades or threatens to invade the rights of others, presents the likelihood of substantial disorder, or is otherwise disruptive to the educational process.

As a result, school officials have the right to take disciplinary action against students who make threats. If it is determined that the threat invades the rights of others, presents the likelihood of substantial disorder, or is otherwise disruptive to the educational process, it is not protected speech.

### **Intervention Strategies**

Situations in which students make threats of direct violence against a student or staff member, such as “I am going to kill \_\_\_\_\_!” or “I have a bomb” require intervention. School officials cannot simply ignore or downplay such statements. There must be a procedure in place for reporting and responding to such statements, whether they occur on the playground, in class, or elsewhere.

Given the safety concerns, school officials have a responsibility to investigate and take appropriate disciplinary action when a student’s speech or other expression, regardless of the form, is reasonably suspected to involve threats of violence against individual students, staff members, or, more generally, the school.

Further, such threats should be immediately and carefully reviewed to determine the risk level posed by the student. It may be appropriate to suspend the student and require a mental health evaluation to determine whether the student poses a threat of harm to others. Referral to the local office of the Department of Health and Welfare Children’s Mental Health Services pursuant to local protocol may be appropriate. If such an evaluation is deemed necessary, the school district must obtain consent from the parent to access the evaluation report so that appropriate action may occur. The school district may be responsible for any financial charges incurred by parents for this risk assessment. Alternatively, some schools have a trained team that assesses threats of violence to determine whether the school district should take disciplinary action and/or otherwise intervene.

## **E. THEFT; PROPERTY DAMAGE**

Theft or destruction of property, whether such property is owned by the school district, a staff member, or another student, may be subject to disciplinary action. As a result, the school district should adopt a policy prohibiting theft or destruction of property, including vandalism (graffiti), arson, etc. In the event the district will require restitution by the perpetrator(s), the policy should also specify what circumstances require restitution and the method by which it will be collected against the student. Also, when appropriate, the school district may refer allegations of theft or destruction of property to law enforcement.



## **Theft**

Allegations of theft may range from taking another student's candy, pens and pencils, or small toys to clothing, computer games, and other electronic devices. Theft is a criminal act. It may be considered "grand theft" if the value exceeds \$1000 or the theft involves extortion by instilling fear of bodily harm or damage to property (felony); in all other instances, theft is categorized as a "petit theft" which is a misdemeanor.

The Idaho Code sets forth the elements of theft, stating, "A person steals property and commits theft when, *with intent to deprive another* of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof."<sup>11</sup> (Emphasis added.) In other words, theft is an intentional crime and successful prosecution requires that the perpetrator's intent be demonstrated. Such intent may be evidenced not only by the eyewitness accounts or admission of the perpetrator, but also by the perpetrator's actions.

However, in the school setting, there are numerous events of students taking another's property, which do not rise to the level of a criminal theft. For example, as a "bullying" tactic, a student may hide another student's backpack, assuming that the victim will find it later that day. Theft has not occurred because there was no intent to deprive the victim of the backpack; rather, the intent is to humiliate and frustrate the victim.

The district has the option of requiring restitution for damage or theft of property. In doing so, the district would need to present evidence as to the value of the property and extent of damage, and also give the perpetrator an opportunity to dispute such valuations.

## **Robbery**

Robbery is defined by Idaho statute as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."<sup>12</sup>

Similar to theft, robbery is an intentional act and involves a "taking" wherein the perpetrator gains possession of another person's property. However, unlike theft, a robbery has the added dimension of being committed when the victim is present and is physically forced to hand over the property or does so out of fear.

The crime is categorized as a felony, regardless of the value of the property, because it involves the immediate use of force or fear.

## **Malicious Injury to Property**

Like theft, a student's destruction of the property of another, including the school district's property, may be subject to criminal prosecution. "Every person who maliciously injures or destroys any real or personal property not his own, or any jointly owned property without permission of the joint owner, . . . is guilty of a misdemeanor."<sup>13</sup>

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<sup>11</sup> Idaho Code §18-2403.

<sup>12</sup> Idaho Code §18-6501.

<sup>13</sup> Idaho Code §18-7001.

Further, the all-too-common problem of graffiti is specifically addressed in Idaho Code §18-7046, which states:

No person shall purposely or knowingly vandalize, deface or otherwise damage the property of another by painting, writing, drawing, or otherwise inscribing thereon in any fashion that which is commonly known as graffiti. Graffiti includes any form of painting, writing, or inscription regardless of the content or the nature of the materials used which is applied to any public or private surface without the consent of the owner of the property. Every person who is convicted of a violation of the provisions of this section is guilty of a misdemeanor.

In addition to the damage caused by defacing school property, some graffiti may involve gang activity and should be reported to police for further investigation.

## **F. RESPONSIBILITIES OF THE SCHOOL DISTRICT**

The school district has a responsibility to take reasonable steps to provide a safe environment for all students, protecting them from violent behavior and threats thereof, while they are on school grounds or at a school sponsored activity.

**Policy Development.** Develop policies in compliance with federal and state mandates. As necessary, the policies should set forth the prohibited behaviors, including but not limited to the possession of weapons, fighting, gang membership, threats of violence, and property theft or damage. Additionally, the district should include broad, general language prohibiting “violent behavior” to address conduct not included in the specific policies.

The code of conduct should also set forth the expectations of courtesy, respect and tolerance for all students.

**Notice of Policies.** Publish the policies in both the staff and student handbooks. If necessary, publish a summary of the policies, using age-appropriate language.

**Curriculum.** Incorporate anti-violence, as well as conflict resolution and community building, themes in the curriculum as appropriate for the students’ age and maturity.

**Student Training.** Educate students as to the terms of the policies and the expected behaviors. Simply prohibiting the inappropriate behaviors is not sufficient to create a safe environment for students. The district must actively teach students what constitutes violence and the district’s expectations regarding acceptable behavior. Additionally, students must be taught that they have the right to not be subject to violent behavior. Students must be educated to report allegations and seek intervention, as necessary for the safety of themselves and others.

**Complaint Process.** Encourage students to report and file complaints of violence; the process should be age-appropriate and accessible. Notify students of the process that is in place in their school.

**Intervention.** Require staff members to intervene, as appropriate, when conduct reasonably appears to constitute violence. Provide appropriate training to staff so they can effectively intervene. Require staff members to document the incident.

**Reporting.** Require that staff members report to a building administrator any conduct which they reasonably perceive to be of a violent nature, and, if appropriate, refer the student(s) to an administrator. Require staff members to document the report.

**Immediate Response.** Take interim steps when allegations of violence occur, as necessary (report allegations to law enforcement, separate students, etc.). Conduct threat assessments to determine whether the student poses a threat of future violence (may require mental health evaluation).

**Investigation.** Investigate all allegations of violent behavior. Conduct an investigation of the allegations, regardless of their nature, in a timely manner.

**Corrective Measures.** Take appropriate corrective measures against students who engage in violent behavior, including disciplinary action, when appropriate.

**Reports to Law Enforcement.** Report incidents of violence to law enforcement when there is a good faith belief that the incident may involve criminal activity. The reporting should occur immediately so that criminal investigations, if appropriate, can occur in a timely manner.

Also, report to law enforcement all incidents where there has been a finding that a student had a firearm or weapon on school property.

## **G. POLICIES**

*Maintenance of Orderly Conduct, Policy No. 540*

*Prohibition of Weapon, Policy No. 541*

*Theft or Destruction of School Property, Policy No. 548*

*Prohibition of Gang Activities, Policy No. 549*

*Assault and Battery, Policy No. 550*

*Students are expected to conduct themselves in such a manner as not to interfere with the orderly operation of the educational program. The building principals are directed to establish reasonable, and age-appropriate, rules necessary to maintain orderly conduct in the school. Any rules established by the principal must be published in the student handbook or otherwise distributed so as to provide adequate notice to all students.*



**LEGAL REFERENCE:**

Idaho Code Section 33-512

**ADOPTED:**

**AMENDED:**

*\*Language in text set forth in italics is optional.*

*This district is committed to providing a safe environment for all students and staff when they are at school, on a school bus, or at any school-sponsored activity. The district's commitment includes the prohibition against any weapons or other objects/substances which may pose a threat to the health and safety of other students, staff members, or visitors, or could be used to disrupt the educational process.*

## **PROHIBITIONS**

*Students attending district schools are prohibited from:*

- 1. Possessing or carrying objects/substances which are manufactured, used, or intended for use as a weapon, or facsimiles thereof, at school, on a school bus, or at any school-sponsored activity without prior permission of school officials.*
- 2. Possessing, carrying, using, and/or threatening to use, any normally non-dangerous object or substance with the intent or result of causing harm to another individual at school, on a school bus, or at any school-sponsored activity.*
- 3. Knowingly assisting another student(s) to possess, carry, or use a weapon at school, on a school bus, or at any school-sponsored activity.*

## **DEFINITIONS**

*“Possess” is defined as bringing an object, or causing it to be brought, onto the property of a school, or onto a vehicle being used for school-provided transportation, or exercising dominion and control over an object located anywhere on such property or vehicle. A student will be determined to possess a weapon when the item is found to be in any of the following locations:*

- 1. On a student's person;*
- 2. In the student's personal property, including, but not limited to, the student's clothing, backpack, purse, or any other item the student transports or carries and/or causes to be transported or carried to school;*
- 3. A vehicle parked in the school parking lot which the student drives and/or is transported in;*
- 4. The student's locker; or*

5. *Any other school-related or school-sponsored event, regardless of location.*

“Deadly or dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length as defined in 18 U.S.C. Section 930. “Weapon” additionally includes the following items: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

“Firearm” shall mean any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame receiver of any such weapon; any firearm muffle or firearm silencer; any destructive device, including any explosive, incendiary or poisonous gas, bomb, grenade, or rocket, missile, mine, or similar device, as defined in 18 U.S.C. Section 921. Antique firearms are specifically excluded.

## **INVESTIGATION**

*The superintendent or designee will immediately investigate any allegation that a student is in violation of this policy. If determined necessary by the superintendent or designee, law enforcement may be requested to conduct the investigation. Any item identified as a weapon may be confiscated by the superintendent or designee. Students reasonably believed to be in possession of these items may be suspended from school until a thorough investigation is completed.*

## **DISCIPLINARY ACTIONS**

*Any student found to be in violation of this policy will be subject to disciplinary action, including, but not limited to, expulsion, suspension, or other appropriate penalties. The board may, at its discretion, expel a student for the possession and/or use of a weapon, regardless of whether the item at issue falls within the definition of “weapon” under the Gun-Free Schools Act. Disciplinary action will be taken after reviewing all factors, including, but not limited to, the mandates of federal and state law; the student’s actions; the risk of harm to the students, district personnel, and patrons; the student’s academic standing; the likelihood of recurring violation; and the student’s prior conduct.*

### **Expulsion Mandated by Federal Law**

The board of trustees shall expel a student when the student’s actions violate federal law, as set forth in the Gun-Free Schools Act and Idaho law, regarding the prohibition of weapons:

**Gun-Free Schools Act.** A student is found by district personnel or by law enforcement personnel to have carried a dangerous weapon as defined by 18 United States Code Section 921 on school property. The definition of weapon, for purposes of expulsion under this provision, includes a firearm or destructive device which is designed to or may be readily converted to and expel a projectile by the action of an explosive or other propellant. Destructive devices such as any explosive, incendiary, or poisonous gas, bomb, or grenade are also defined as firearms. Specifically excluded from the definition of “weapons” pursuant to the Gun-Free Schools Act, and therefore not subject to mandatory expulsion, are the following:

1. Antique firearms and rifles which the owner intends to use solely for sporting, recreational, or cultural purposes;
2. Firearms that are lawfully stored inside a locked vehicle on school property; and
3. Weapons which are used in activities, approved and authorized by the superintendent or designee, when appropriate safeguards are adopted to ensure student safety.

The expulsion, pursuant to the Gun-Free Schools Act, will be for a period of not less than one (1) year (twelve (12) calendar months). The board may modify the expulsion order on a case-by-case basis, *taking into account the individual circumstances and the severity of the incident.*

### **Referral to Law Enforcement**

The district will refer any student who brings onto school property a weapon or firearm, as defined under the Gun-Free Schools Act or Idaho law, to law enforcement.

*The board may, at its discretion, refer other students who violate this policy to law enforcement.*

### **STUDENTS WITH DISABILITIES**

Disciplining students with disabilities, as defined by Public Law 94-142 and subsequent amendments, and Section 504 of the 1973 Rehabilitation Act, under this policy will follow federal guidelines.

**DENIAL OF ENROLLMENT**

*This district will not admit a student who has been expelled from another school district for violation of a statute, regulation, or policy which prohibits weapons until the student is eligible to return to his or her home school district. If a student wishes to challenge that decision, he or she is entitled to a due process hearing pursuant to Idaho Code Section 33-205.*



**LEGAL REFERENCE:**

Idaho Code Sections

33-205

18-3302D

18 USC 921

18 USC 930

Elementary and Secondary Education Act, Section 4141 (2001)

**ADOPTED:**

**AMENDED:**

*\*Language in text set forth in italics is optional.*

**Note:** The district has the right to determine what items constitute a weapon. The definitions of “deadly or dangerous weapon” and “firearm” are the definitions referenced in Idaho Code § 18-3302D, which is the state statute governing carrying weapons or firearms on school property. Districts may add other items to its definition of “weapon” to address local concerns.

Expulsion is currently only mandated (to be modified on a case-by-case basis) in those instances where a weapon, as defined by the Gun-Free Schools Act, is involved. If the board modifies the expulsion in a specific instance, it has the right to impose alternative disciplinary measures.



*Any student who steals, destroys, or defaces school district property, or the property of another individual located at a school site, will receive prompt and decisive disciplinary action, which may include, but is not limited to, suspension or expulsion. If circumstances warrant, the student may be referred to the local law enforcement agency.*

The student and his or her parent/guardian will be held responsible for restitution to the full extent of the laws for any damage to school district property.



**LEGAL REFERENCE:**

Idaho Code Section 6-210

**ADOPTED:**

**AMENDED:**

*\*Language in text set forth in italics is optional.*

*This school district has a legitimate educational objective of curtailing gangs and gang activities. In furtherance of this educational objective, all gangs and gang activities, including, but not limited to, wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblem, badge, symbol, sign, gestures, codes, or other things which evidence membership or affiliation in any gang, are prohibited in any of the public schools in this district and at all school functions.*

It will be unlawful for any person, group, or organization to establish a fraternity, sorority, or other secret society whose membership is comprised in whole or in part of students enrolled in this district's public schools, or to solicit a student in any of this district's schools to become a member of such organization; and no student enrolled in this school district will be or become a member, or pledge him/herself to become a member of any such organization.

*Furthermore, student use of electronic communication devices is prohibited. Any student using such a device on school grounds will have the device confiscated until the end of the school day. If a subsequent use of the device occurs, it will be confiscated until the end of the year, or a parent/guardian picks it up.*

Disciplinary action for violation of this policy may include suspension and/or expulsion.



**LEGAL REFERENCE:**

Idaho Code Sections

33-1901

33-1902

**ADOPTED:**

**AMENDED:**

*\*Language in text set forth in italics is optional.*

*This district prohibits students from committing acts of violence against other students, district personnel, or other persons. Any assault or battery by a student on an employee of this district, another student, or other person, occurring on or near the school property or at a school sponsored event will result in the student being disciplined.*

*Assault is defined as any willful attempt or threat to inflict injury upon another person, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the individual reason to fear or expect immediate bodily harm. An assault may be committed without actually touching, or striking, or doing bodily harm to another person.*

*Battery is defined as the willful and unlawful use of force or violence, or the actual, intentional, and unlawful touching or striking against the will of another, or unlawfully and intentionally causing bodily harm.*



**LEGAL REFERENCE:**

Idaho Code Section 18-901, *et seq.*

BLACK'S LAW DICTIONARY 105 (5th ed. 1979)

**ADOPTED:**

**AMENDED:**

*\*Language in text set forth in italics is optional.*

## **H. SCENARIO A: THEFT/ROBBERY**

Mrs. Jones, the school librarian who is in her sixties, is walking from her car across the school parking lot to the side door of the school, carrying an armload of books and papers and her large pocket book/purse. Unknown to Mrs. Jones, her purse is not fully zipped up, and dangling from its zipper is her coin purse and her key chain. As she walks along she is jostled by two high school juniors who are rushing from the school to a car parked across the street from the parking lot. The boys bump into Mrs. Jones, causing her to drop her books and papers, as well as her purse. One of the boys, Jerry, is carrying a backpack that is torn, which he drops as they collide. He stops momentarily and helps Mrs. Jones pick up some of her things, as well as stuffing things back into his backpack. His friend rushes on and yells back to him to hurry. When Jerry reaches the car where his friend is waiting, he looks to see if he has all of his “stuff” in the backpack. He notices that he has picked up the keys and coin purse belonging to Mrs. Jones, and he puts them into his backpack.

Jerry begins to tell his friend he needs to take the keys and money back to Mrs. Jones. Eric, his friend, protests that they don’t have time for that and, besides, they might want them. Eric starts the car and pulls into the street.

Meanwhile, Mrs. Jones has gone to her desk in the library, put her books and papers down, and put her purse away. She does not notice that she does not have her keys or coin purse.

Jerry and Eric drive off to a popular local place to eat. In paying for their food, Eric suggests that they use the money in the coin purse to pay and they do, counting the folded bills that remain. There are three \$20 bills and some \$1 bills. Eric wants to use this money to fill his car with gas. Jerry expresses some misgivings but goes along, not wanting to disappoint his friend. That evening when Eric drives Jerry to his house, Jerry forgets that Mrs. Jones’s car keys are still in Eric’s car along with the coin purse. He takes his bag that contains some personal items, including his large three-inch long pocketknife, a belt buckle with a fake pistol on it, and a T-shirt with a picture of marijuana on the front.

That evening Mrs. Jones’s car is stolen from her house. She had driven home using her spare car keys, which were in a small pocket inside her purse. She wondered what happened to the keys she usually used, but had not yet missed her coin purse.

### **QUESTIONS:**

- Have Jerry or Eric violated any school policies at your school? Has either of them committed a crime?
- If yes, which policies or crimes and why?
- What should happen as a result of any violations?
- Are the boys equally responsible?

- Should Jerry and Eric receive the same discipline?
- Does it change the process that will be used if Jerry is a special education student? How does this impact the school's response?

### **RESPONSES TO QUESTIONS:**

Responses provided to this scenario, as well as to the additional scenarios, suggest a starting point in approaching these circumstances. The answers are not intended to be all-inclusive; other answers may also be viewed as correct. The information gained in investigation/interview of the parties will allow the administrator to tailor responses and recommendations to best meet the needs of the individual student, and provide a safe learning environment for the students and personnel.

- **Have Jerry or Eric violated any school policies at your school? Has either of them committed a crime?**

Each school district typically has a policy that prohibits theft, the stealing of property of the school or others. When an individual takes the property of another person with the intent not to return it, it is stealing. If the person who takes the property uses it or spends money taken, that is evidence that the person has no intent to return the property.

- **If yes, which policies or crimes and why?**

In order to answer this question, a review of the school district's policies must occur, along with a discussion with local law enforcement, and/or the school district's legal counsel.

- **What should happen as a result of any violations?**

It does appear that theft on school property has occurred; Mrs. Jones's keys and coin purse were taken. While it initially appears that those items were accidentally taken, there was a conscious decision made not to return those items to her. Further, money from Mrs. Jones's coin purse was spent. Thus, it does appear Jerry and Eric may be disciplined pursuant to school district policy for the theft of Mrs. Jones's keys and coin purse. Further, the matter can be referred to law enforcement.

Although, from this set of facts, it sounds like Jerry or Eric may have been involved in the stealing of Mrs. Jones's car, there is no direct evidence of this. The information that the school district has should be reported to law enforcement. If the car was stolen by either or both of the boys, that fact, in and of itself, is typically not grounds for suspension or expulsion, unless the school district can show the misbehavior that occurred off school grounds had a direct negative impact to the educational process in the school setting. The matter can be referred to law enforcement.

- **Are the boys equally responsible?**

The fact scenario seems to indicate that Jerry was initially inclined to return the money and keys to Mrs. Jones, but Eric was definitely not. If the circumstances are investigated and result in a disciplinary recommendation by the principal to the superintendent/board, this factor could be considered by the superintendent or board.

- **Should Jerry and Eric receive the same discipline?**

The answer to this question may depend on school district policy, and whether prior infractions have occurred. As mentioned above, the fact that Jerry initially was inclined to return the keys and money to Mrs. Jones should be taken into account in determining what discipline would be appropriate.

- **Does it change the process that will be used if Jerry is a special education student? How does this impact the school's response?**

If Jerry is a special education student, the administration must take additional steps required by the Individuals with Disabilities Education Act (IDEA) in the imposition of discipline. If a special education student is suspended for longer than ten (10) days in a school year, the school has the responsibility to provide FAPE to the student during that extended period of suspension. If the student is expelled, the school continues to have the responsibility to provide FAPE to the student. Additionally, the IEP team has the responsibility to determine if the action of the special education student relates to the student's disability, through the manifestation determination process. Further, the requirements for a functional behavioral assessment and behavior intervention plan may come into play. (Under the reauthorization of IDEA in 2004, the requirements regarding discipline of special education students are modified somewhat, effective July 5, 2005; however, federal regulations fleshing out these changes have not yet been promulgated.)

## **SCENARIO B:      WEAPONS**

Tim is a good student and has never had disciplinary issues at school. He is talking with a classmate that he doesn't know well and the other student tells him he has a knife he will sell to him, cheap. The other boy shows him the knife. It is about six inches long and has an intricately carved handle. Tim likes how it looks and has several knives at home. He is not sure if he wants to buy the knife, and asks if he can think about it over night. The seller says okay, and Tim places the knife in his backpack and doesn't think about it again until he goes home. He decides he doesn't want the knife and that he will take it back to the seller the following day. He puts the knife in his backpack and takes it to school the next day. When he sees the seller he takes the knife out of his backpack and other students see him handling the knife. The students contact the vice-principal.

The vice-principal immediately gets Tim from class. He no longer has the knife, as he has returned it to the seller, but acknowledges that he did have the knife at school.

### **QUESTIONS:**

- What actions should the vice-principal take?
- Should Tim be suspended? Should he be expelled under the school's zero tolerance policy? Why or why not?
- What should happen to the seller? Should he be suspended? Or, expelled?
- Would your view differ if Tim had been threatening other students with the knife? What if he says he was just joking?
- Can Tim and his parents try to arrange for enrollment in another school district during the time he is suspended?

### **RESPONSES TO QUESTIONS:**

- **What actions should the vice-principal take?**

Tim should be interviewed to get all available information regarding the knife, how he obtained it, and its present location. The knife should be located and confiscated from the student as contraband. If the knife meets the definition of weapon, disciplinary actions should be taken regarding both students. The culpability of each student should be considered in the recommendations made by administration.

- **Should Tim be suspended? Should he be expelled under the school's zero tolerance policy? Why or why not?**

Although Idaho and federal law allows for the expulsion of a student who has a weapon on school premises for up to twelve months, if the board of trustees determines that a lesser disciplinary measure is appropriate, the board may order it. The totality of the circumstances

should be considered. The student's motivation, prior actions, educational achievement, and response to the circumstances are relevant to the board's determination. The board must focus on the actions necessary to assure that the safety of the learning environment is maintained.

- **What should happen to the seller? Should he be suspended? Or, expelled?**

Investigation will determine an appropriate disciplinary action in this situation. See the answer regarding Tim, above.

- **Would your view differ if Tim had been threatening other students with the knife? What if he says he was just joking?**

Factors to be considered in determination of the appropriate discipline include the motivation and the likelihood that the incident will recur. Mitigating as well as aggravating factors should be considered.

- **Can Tim and his parents try to arrange for enrollment in another school district during the time he is suspended?**

Tim can seek enrollment in another school district or a private school during a period of suspension.